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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,357	08/20/2003	David Wendt	RSW920030138US1	6413

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EXAMINER

HICKS, MICHAEL J

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TM 10/02/06.

Office Action Summary

Application No.
10/644,357
~~10/644,357~~

Applicant(s)
~~ROSEN ET AL.~~ **WENDT, David.**

Examiner
Michael J. Hicks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-20 Pending.

Response to Arguments

2. The declaration filed on 8/7/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Kamentz reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the IBM reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Per MPEP 715,

The essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. **FACTS, not conclusions, must be alleged.** Evidence in the form of exhibits may accompany the affidavit or declaration. **Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show.**

A general allegation that the invention was completed prior to the date of the reference is not sufficient. Ex parte Saunders, 1883 C.D. 23, 23 O.G. 1224 (Ccrmm'r

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Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, **without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131.**

When reviewing a 37 CFR 1_131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and 'notes." An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself. Ex parte (vshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989).

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ29 (CCPA 1974). **Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant.** 505 F.2d at 718-19, 184 USPQ at 33. See also In re HaMr, 333 F.2d 920, 142-USPQ 164 (CCPA 1964) (Affidavit asserts that facts exist but does not tell what they are or when they occurred.").

In general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose.

The declaration and the accompanying exhibit, do not provide enough evidence to support all the claimed limitations prior to the reference date, therefore does not support conception of the claimed inventions.

It is noted, Applicant only states "Exhibit A shows reduction to practice of the invention" see Exhibit A page 1, however, applicant does not give any clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4-9, 11-16, and 18-20 rejected under 35 U.S.C. 102(e) as being anticipated by Kamentz et al. (U.S. Pre Grant Publication Number 2005/0033767 and referred to hereinafter as Kamentz).

As per Claims 1, 8, and 15, Kamentz discloses a method, system and computer program product for compiling source code using a compiler having a classpath, comprising the steps of (i.e. "...a system and method are provided for selecting a resource for use during execution of a software application...The third level includes the Application ClassLoader. This class loader provides access to classes available through the CLASSPATH environment variable." The preceding text excerpt clearly indicates that source code may be compiled (e.g. a software application may be executed, which includes compilation) and that as part of the compilation, a classpath variable may be used to retrieve classes.) (Page 1, Paragraph 0004; Page 4, Paragraph 0037): 1) determining if a referenced class file is located in a workspace (i.e. "Decision process 350 examines whether any acceptable resource version(s) are available on the local computer. If at least one is locally available, then process 360 loads the compatible resource from local storage for execution...However, if decision process 350 determined that an acceptable resource version is not locally available, then process 370 retrieves a compatible version, such as from a remote server...An Applet ClassLoader may be used to read classes from a remote machine and load them into the currently running VM...The versioned JAR cache may be a database capable of storing multiple versions of a resource and it's associated metadata..." The preceding text excerpt clearly indicates that a determination as to whether the resource (e.g. in this case the referenced class file) is located on the local system or in the remote machine/workspace. Note that the remote machine which is referenced is defined to be a database system which stores multiple versions (e.g. working copies) of a resource and it's associated metadata. This can be construed to be a database which has different versions of the resource (e.g. class file) stored in workspaces.) (Figure 4; Page 4, Paragraphs 0036, 0037, 0040); 2) locating said class file in said workspace (i.e. "However, if decision process 350 determined that an acceptable resource version is not locally available, then process 370 retrieves a compatible version, such as from a remote server." The preceding text excerpt clearly indicates that the resource (e.g. class file) is located and retrieved/accessed from the remote machine/workspace within the database.) (Figure 4; Page 4,

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Paragraph 0036); 3) accessing said class file (i.e. *"However, if decision process 350 determined that an acceptable resource version is not locally available, then process 370 retrieves a compatible version, such as from a remote server."* The preceding text excerpt clearly indicates that the resource (e.g. class file) is located and retrieved/accessed from the remote machine/workspace within the database.) (Figure 4; Page 4, Paragraph 0036); and 4) returning said class file data to said compiler (i.e. *"However, if decision process 350 determined that an acceptable resource version is not locally available, then process 370 retrieves a compatible version, such as from a remote server. Process 380 locally stores the retrieved resource so that process 360 may load it for execution..."* The preceding text excerpt clearly indicates that the resource (e.g. class file) is returned to and stored on the local machine for use during execution/compilation.) (Figure 4; Page 4, Paragraph 0036)

As per Claims 2, 9, and 16, Kamentz discloses the step of locating said class file further comprises the steps of: identifying a location of a class using a workspace indicator in said classpath (i.e. *"The third level includes Application ClassLoader. This class loader provides access to classes available through the CLASSPATH environment variable. An Applet ClassLoader may be used to read classes from a remote machine and load them into the currently running VM."* The preceding text excerpt clearly indicates that the classpath variable is used to locate classes, and also that classes may be retrieved from remote machines (e.g. a workspace within the version database as above). This further indicates that a workspace indicator must be present which would be placed in the classpath to direct the ClassLoader to the referenced class for retrieval.) (Page 4, Paragraph 0037); and reading said class from said location (i.e. *"The third level includes Application ClassLoader. This class loader provides access to classes available through the CLASSPATH environment variable. An Applet ClassLoader may be used to read classes from a remote machine and load them into the currently running VM."* The preceding text excerpt clearly indicates that

the class is read/retrieved from the remote machine and loaded into the virtual machine of the local system.) (Page 4, Paragraph 0037).

As per Claims 4 and 11, Kamentz discloses the step of determining if a referenced class file is located in a workspace further comprises the steps of: reading an item from said classpath (i.e. *"The third level includes Application ClassLoader. This class loader provides access to classes available through the CLASSPATH environment variable."* The preceding text excerpt clearly indicates that an item may be read from the claspath in order to determine the location of a class file.) (Page 4, Paragraph 0037); determining if said item references said file system or said workspace (i.e. *"The third level includes Application ClassLoader. This class loader provides access to classes available through the CLASSPATH environment variable. An Applet ClassLoader may be used to read classes from a remote machine and load them into the currently running VM."* The preceding text excerpt clearly indicates that, because the system is able to retrieve a class file from a remote machine, it must also be able to determine if the class file is located locally (e.g. in the file system) or remotely (e.g. in a workspace on the remote machine).) (Page 4, Paragraph 0037); searching a file system directory specified by said item if said item references said file system (i.e. *"Decision process 350 examines whether any acceptable resource version(s) are available on the local computer. If at least one is locally available, then process 360 loads the compatible resource from local storage for execution"* The preceding text excerpt clearly indicates that if the class file/resource is located locally/in the file system, the file system is searched according to the location in the classpath (as above) for the class file/resource.) (Page 4, Paragraph 0036); and searching said workspace if said item references said workspace (i.e. *"An Applet ClassLoader may be used to read classes from a remote machine and load them into the currently running VM."* The preceding text excerpt clearly

indicates that the class is read/retrieved from the remote machine and loaded into the virtual machine of the local system if it is determined that the class file is located remotely.) (Page 4, Paragraph 0037).

As per Claims 5, 12, and 18, Kamentz discloses said class file data is contained in a database (i.e. *"The versioned JAR cache may be a database capable of storing multiple versions of a resource and it's associated metadata"* The preceding text excerpt clearly indicates the class file data (e.g. the resource being retrieved by the ClassLoader) is contained in a database.) (Page 4, Paragraph 0040).

As per Claims 6, 13, and 19, Kamentz discloses said class file is contained within a .JAR file in said workspace (i.e. *"The versioned JAR cache may be a database capable of storing multiple versions of a resource and it's associated metadata"* The preceding text excerpt clearly indicates that the class file (e.g. the resource retrieved by the Class Loader) may be in a .jar file within the workspace, as defined above.) (Page 4, Paragraph 0040).

As per Claims 7, 14, and 20, Kamentz discloses said source code is Java (i.e. *"Typically, the Java environment would use multiple levels of class loaders..."* The preceding text excerpt clearly indicates the source code is Java) (Page 4, Paragraph 0037).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 10, and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Kamentz in view of Bobbitt et al (U.S. Pre Grant Publication Number 2003/0115218 and referred to hereinafter as Bobbitt).

As per Claims 3, 10, and 17, Kamentz fails to disclose said indicator comprises a signature string, a user ID, a project ID, and a workspace name.

Bobbitt discloses said indicator comprises a signature string, a user ID, a project ID, and a workspace name (i.e. *"The directory structure stored in Gossamer namespace parallels the virtual directory hierarchy, wherein the files contained (logically) in the virtual directories are replaced by file pointers having the same names as the original files...Accordingly, the respective file pointers to these files having the same namespace and located in the same subdirectory path ("/user/joe") relative to the /Namespace directory are stored in Gossamer namespace."* The preceding text excerpt clearly indicates that the classpath indicator, as disclosed above, may consist of a signature string (e.g. a pointer which identifies the file/class file in its virtual file system/workspace location) which consist of a user ID (e.g. joe in user/joe), a project ID (e.g. represented by user in /user) and a workspace name (e.g. represented by /Namespace.) (Page 5, Paragraph 0053).

It would have been obvious to one skilled in the art at the time of Applicants invention to modify the teachings of Kamentz with the teachings of Bobbitt to include said indicator comprises a signature string, a user ID, a project ID, and a workspace name with the motivation of allowing access to files in a virtual file system (e.g. a workspace) by using a file pathname to identify the file and map it to a location which is

accessible from outside the virtual file system (e.g. workspace) (Bobbitt, Page 1, Paragraph 8).

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Hicks whose telephone number is (571) 272-2670. The examiner can normally be reached on Monday - Friday 8:30a - 5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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